

1-1 By: Smithee (Senate Sponsor - Zaffirini) H.B. No. 3306
 1-2 (In the Senate - Received from the House May 6, 2019;
 1-3 May 6, 2019, read first time and referred to Committee on Business
 1-4 & Commerce; May 15, 2019, reported favorably by the following vote:
 1-5 Yeas 7, Nays 0; May 15, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Hancock	X			
1-8 Nichols	X			
1-9 Campbell	X			
1-10 Creighton			X	
1-11 Menéndez	X			
1-12 Paxton	X			
1-13 Schwertner	X			
1-14 Whitmire			X	
1-15 Zaffirini	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the disclosure of information concerning the corporate
 1-20 governance structure of certain insurers and related entities;
 1-21 providing an administrative penalty.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Subtitle B, Title 6, Insurance Code, is amended
 1-24 by adding Chapter 831 to read as follows:

1-25 CHAPTER 831. CORPORATE GOVERNANCE ANNUAL DISCLOSURE

1-26 Sec. 831.0001. APPLICABILITY AND PURPOSE. (a) The purpose
 1-27 of this chapter is to promote the public interest by:

1-28 (1) requiring annual disclosure of an insurer or
 1-29 insurance group's corporate governance structure, policies, and
 1-30 practices to permit the commissioner to gain and maintain an
 1-31 understanding of the insurer's corporate governance framework; and

1-32 (2) providing for the confidential treatment of the
 1-33 corporate governance annual disclosure and related information as
 1-34 the disclosure and related information will contain confidential
 1-35 and sensitive information related to an insurer or insurance
 1-36 group's internal operations and proprietary and trade-secret
 1-37 information which, if made public, could potentially cause the
 1-38 insurer or insurance group competitive harm or disadvantage.

1-39 (b) This chapter may not be construed to prescribe or impose
 1-40 corporate governance standards and internal procedures beyond that
 1-41 which is required under applicable state corporate law.

1-42 (c) Notwithstanding Subsection (b), this chapter may not be
 1-43 construed to limit the commissioner's authority, or the rights or
 1-44 obligations of third parties, under Chapter 401.

1-45 (d) This chapter applies to each insurer domiciled in this
 1-46 state, except that this chapter does not apply to a domestic insurer
 1-47 that is authorized, admitted, or eligible to engage in the business
 1-48 of insurance only in this state. For the purposes of this chapter,
 1-49 an insurer is not considered to be authorized, admitted, or
 1-50 eligible to engage in the business of insurance only in this state
 1-51 if the insurer is a member of an insurance group that writes or
 1-52 assumes insurance in any manner in another state.

1-53 Sec. 831.0002. DEFINITIONS. In this chapter:

1-54 (1) "Disclosure" means the confidential corporate
 1-55 governance annual disclosure filed by the insurer or insurance
 1-56 group in accordance with the requirements of this chapter.

1-57 (2) "Insurance group" means the insurers and
 1-58 affiliates included within an insurance holding company system as
 1-59 described by Section 823.006.

1-60 (3) "Insurer" has the meaning assigned by Section
 1-61 823.002. The term includes a health maintenance organization

2-1 authorized to engage in business under Chapter 843.

2-2 Sec. 831.0003. DISCLOSURE REQUIRED. (a) Except as
 2-3 provided by Subsection (b), an insurer, or the insurance group of
 2-4 which the insurer is a member, shall, not later than June 1 of each
 2-5 calendar year, submit to the commissioner a corporate governance
 2-6 annual disclosure that contains the information described by
 2-7 Section 831.0008(c).

2-8 (b) Notwithstanding any request from the commissioner under
 2-9 Subsection (d), an insurer that is a member of an insurance group
 2-10 shall submit the report required by Subsection (a) to the
 2-11 commissioner of the lead state for the insurance group, in
 2-12 accordance with the laws of the lead state, as determined by the
 2-13 procedures adopted by the National Association of Insurance
 2-14 Commissioners.

2-15 (c) The disclosure must include a signature of the insurer
 2-16 or insurance group's chief executive officer or corporate secretary
 2-17 attesting to the best of that individual's belief and knowledge
 2-18 that the insurer has implemented the corporate governance practices
 2-19 described in the disclosure and that a copy of the disclosure has
 2-20 been provided to the insurer's board of directors or the
 2-21 appropriate committee of the insurer's board of directors.

2-22 (d) An insurer not otherwise required to submit a disclosure
 2-23 under this chapter shall submit a disclosure on the commissioner's
 2-24 request.

2-25 Sec. 831.0004. LEVEL OF REPORTING. (a) For purposes of
 2-26 completing the disclosure under Section 831.0003, an insurer or
 2-27 insurance group may provide information regarding corporate
 2-28 governance at the ultimate controlling parent level, an
 2-29 intermediate holding company level, or the individual legal entity
 2-30 level, depending on how the insurer or insurance group has
 2-31 structured the insurer's or insurance group's system of corporate
 2-32 governance.

2-33 (b) An insurer or insurance group is encouraged to make the
 2-34 disclosure:

2-35 (1) at the level at which the insurer's or insurance
 2-36 group's risk appetite is determined;

2-37 (2) at the level at which the earnings, capital,
 2-38 liquidity, operations, and reputation of the insurer are overseen
 2-39 collectively and at which the supervision of those factors are
 2-40 coordinated and exercised; or

2-41 (3) at the level at which legal liability for failure
 2-42 of general corporate governance duties would be placed.

2-43 (c) If an insurer or insurance group determines the level of
 2-44 reporting based on the criteria described by Subsection (b), the
 2-45 insurer or insurance group shall indicate which of the three
 2-46 criteria was used to determine the level of reporting and explain
 2-47 any subsequent changes in level of reporting.

2-48 Sec. 831.0005. REVIEW OF DISCLOSURE; REQUEST FOR ADDITIONAL
 2-49 INFORMATION. The review of the disclosure and any additional
 2-50 requests for information shall be made through the lead state as
 2-51 determined by the procedures adopted by the National Association of
 2-52 Insurance Commissioners described by Section 831.0003(b).

2-53 Sec. 831.0006. SUBSTANTIALLY SIMILAR INFORMATION. An
 2-54 insurer that provides information substantially similar to the
 2-55 information required by this chapter in other documents provided to
 2-56 the commissioner, including proxy statements filed in conjunction
 2-57 with Form B requirements or other state or federal filings provided
 2-58 to the department, is not required to duplicate that information in
 2-59 the disclosure but is required only to cross-reference the document
 2-60 in which the information is included.

2-61 Sec. 831.0007. PART OF EXAMINATION PROCESS. The disclosure
 2-62 and any additional information requested by the commissioner and
 2-63 provided to the department as described by this chapter is
 2-64 considered part of the process of examination of insurers under
 2-65 this code, including Chapter 401.

2-66 Sec. 831.0008. CONTENTS OF DISCLOSURE. (a) An insurer or
 2-67 insurance group has discretion over the responses to the disclosure
 2-68 inquiries, provided the disclosure must contain the material
 2-69 information necessary to permit the commissioner to gain an

3-1 understanding of the insurer's or insurance group's corporate
 3-2 governance structure, policies, and practices.

3-3 (b) The commissioner may request additional information
 3-4 that the commissioner considers material and necessary to provide
 3-5 the commissioner with a clear understanding of:

3-6 (1) the corporate governance policies; and

3-7 (2) the reporting, information system, or controls
 3-8 implementing those policies.

3-9 (c) Notwithstanding Subsections (a) and (b), the disclosure
 3-10 shall be prepared consistent with rules adopted by the
 3-11 commissioner. Documentation and supporting information must be
 3-12 maintained and made available on examination or on request of the
 3-13 commissioner.

3-14 Sec. 831.0009. CONFIDENTIALITY. (a) Documents, materials,
 3-15 or other information, including a disclosure, in the possession or
 3-16 control of the department that is obtained by, created by, or
 3-17 disclosed to the commissioner or any other person under this
 3-18 chapter is confidential and privileged and is:

3-19 (1) not subject to disclosure under Chapter 552,
 3-20 Government Code;

3-21 (2) not subject to subpoena; and

3-22 (3) not subject to discovery or admissible in evidence
 3-23 in any private civil action.

3-24 (b) Documents, materials, or other information, including a
 3-25 disclosure, in the possession or control of the department that is
 3-26 obtained by, created by, or disclosed to the commissioner or any
 3-27 other person under this chapter is recognized by this state as being
 3-28 proprietary and to contain trade secrets.

3-29 (c) The commissioner may use the documents, materials, or
 3-30 other information described in this section to further any
 3-31 regulatory or legal action brought as part of the commissioner's
 3-32 official duties. The commissioner may not otherwise make the
 3-33 documents, materials, or other information public without the prior
 3-34 written consent of the insurer. Nothing in this section may be
 3-35 construed to require written consent of the insurer before the
 3-36 commissioner may share or receive documents, materials, or other
 3-37 information under Subsection (e).

3-38 (d) The commissioner and any other person who receives
 3-39 documents, materials, or other information under this chapter,
 3-40 through examination, or otherwise under any other law, while acting
 3-41 under the authority of the commissioner, or with whom the
 3-42 documents, materials, or other information is shared under this
 3-43 chapter may not testify or be required to testify in any private
 3-44 civil action concerning any documents, materials, or other
 3-45 information subject to Subsection (a) or (b).

3-46 (e) In order to assist in the performance of the
 3-47 commissioner's regulatory duties, the commissioner may, on
 3-48 request, share documents, materials, or other information,
 3-49 including confidential and privileged documents, materials, or
 3-50 information subject to Subsection (a) or (b) and proprietary and
 3-51 trade-secret documents, materials, or information, with:

3-52 (1) other state, federal, and international financial
 3-53 regulatory agencies, including members of a supervisory college
 3-54 described by Section 823.0145;

3-55 (2) the National Association of Insurance
 3-56 Commissioners; and

3-57 (3) a third-party consultant under Section 831.0012.

3-58 (f) Before the commissioner may share information under
 3-59 this section, the recipient shall:

3-60 (1) agree in writing to maintain the confidential and
 3-61 privileged status of the documents, materials, or other information
 3-62 shared under this section; and

3-63 (2) verify in writing the recipient's legal authority
 3-64 to maintain the confidential and privileged status of that
 3-65 information.

3-66 (g) In order to assist in the performance of the
 3-67 commissioner's regulatory duties, the commissioner may receive
 3-68 documents, materials, or other governance-related information,
 3-69 including confidential and privileged documents, materials, or

4-1 information and proprietary and trade-secret documents, materials,
 4-2 or information from:

4-3 (1) regulatory officials of other state, federal, and
 4-4 international financial regulatory agencies, including members of
 4-5 a supervisory college described by Section 823.0145; and

4-6 (2) the National Association of Insurance
 4-7 Commissioners.

4-8 (h) The commissioner shall maintain as confidential or
 4-9 privileged any documents, materials, or information received under
 4-10 Subsection (g) with notice or the understanding that it is
 4-11 confidential or privileged under the laws of the jurisdiction that
 4-12 is the source of the document, material, or information.

4-13 Sec. 831.0010. AUTHORITY OF COMMISSIONER NOT AFFECTED. The
 4-14 sharing of documents, materials, or other information by the
 4-15 commissioner under this chapter does not constitute a delegation of
 4-16 regulatory authority or rulemaking, and the commissioner is solely
 4-17 responsible for the administration, execution, and enforcement of
 4-18 the provisions of this chapter.

4-19 Sec. 831.0011. PRIVILEGE AND CONFIDENTIALITY NOT WAIVED. A
 4-20 waiver of an applicable privilege or claim of confidentiality in
 4-21 documents, materials, or other information, including proprietary
 4-22 and trade-secret materials, does not occur as a result of
 4-23 disclosure of the document, materials, or information to the
 4-24 commissioner under this chapter or as a result of sharing as
 4-25 authorized by this chapter.

4-26 Sec. 831.0012. NATIONAL ASSOCIATION OF INSURANCE
 4-27 COMMISSIONERS AND THIRD-PARTY CONSULTANTS. (a) The commissioner
 4-28 may retain, at the insurer's expense, third-party consultants,
 4-29 including attorneys, actuaries, accountants, and other experts not
 4-30 otherwise part of the commissioner's staff as may be reasonably
 4-31 necessary to assist the commissioner in reviewing the disclosure
 4-32 and related information or the insurer's compliance with this
 4-33 chapter.

4-34 (b) A person retained under Subsection (a) is under the
 4-35 direction and control of the commissioner and acts in a purely
 4-36 advisory capacity.

4-37 (c) The National Association of Insurance Commissioners and
 4-38 a third-party consultant are subject to the same confidentiality
 4-39 standards and requirements as the commissioner.

4-40 (d) As part of the retention process, a third-party
 4-41 consultant shall verify to the commissioner, with notice to the
 4-42 insurer, that the consultant:

4-43 (1) is free of a conflict of interest; and

4-44 (2) has internal procedures in place to:

4-45 (A) monitor compliance with a conflict; and

4-46 (B) comply with the confidentiality standards
 4-47 and requirements of this chapter.

4-48 (e) A written agreement with the National Association of
 4-49 Insurance Commissioners or a third-party consultant governing
 4-50 sharing and use of information provided under this chapter must
 4-51 expressly require the written consent of the insurer before
 4-52 information provided under this chapter is made public and contain:

4-53 (1) specific procedures and protocols for maintaining
 4-54 the confidentiality and security of disclosure-related information
 4-55 shared with the National Association of Insurance Commissioners or
 4-56 the third-party consultant under this chapter;

4-57 (2) procedures and protocols for the sharing by the
 4-58 National Association of Insurance Commissioners of
 4-59 disclosure-related documents, materials, or other information only
 4-60 with other state regulators from states in which an affected
 4-61 insurance group has domiciled insurers, including a requirement
 4-62 that the recipient agrees in writing to maintain the confidential
 4-63 and privileged status of the shared documents, materials, or other
 4-64 information and has verified in writing the recipient's legal
 4-65 authority to maintain the confidential and privileged status of
 4-66 that information;

4-67 (3) a provision specifying that ownership of
 4-68 disclosure-related documents, materials, or other information
 4-69 shared with the National Association of Insurance Commissioners or

5-1 a third-party consultant remains with the department and the use of
5-2 the information by the National Association of Insurance
5-3 Commissioners or third-party consultant is subject to the direction
5-4 of the commissioner;

5-5 (4) a provision that prohibits the National
5-6 Association of Insurance Commissioners or third-party consultant
5-7 from storing disclosure-related documents, materials, or other
5-8 information shared under this chapter in a permanent database after
5-9 the underlying analysis is completed;

5-10 (5) a provision requiring the National Association of
5-11 Insurance Commissioners or third-party consultant to provide
5-12 prompt notice to the commissioner and to the insurer or insurance
5-13 group regarding any subpoena, request for disclosure, or request
5-14 for production of the insurer's disclosure-related documents,
5-15 materials, or other information; and

5-16 (6) a requirement that the National Association of
5-17 Insurance Commissioners or third-party consultant consents to
5-18 intervention by an insurer in any judicial or administrative action
5-19 in which the National Association of Insurance Commissioners or
5-20 third-party consultant may be required to disclose confidential
5-21 information about the insurer shared with the National Association
5-22 of Insurance Commissioners or third-party consultant under this
5-23 chapter.

5-24 Sec. 831.0013. ADMINISTRATIVE PENALTY. (a) An insurer
5-25 that, without good cause, fails to timely file the disclosure as
5-26 required by this chapter commits a violation subject to an
5-27 administrative penalty under Chapter 84.

5-28 (b) Each day the violation continues is a separate violation
5-29 for purposes of this section.

5-30 (c) The commissioner may reduce the amount of the penalty
5-31 assessed under this section if the insurer demonstrates to the
5-32 commissioner that the imposition of the penalty would constitute a
5-33 financial hardship to the insurer.

5-34 Sec. 831.0014. RULES. (a) The commissioner shall adopt
5-35 rules as necessary to enforce this chapter.

5-36 (b) A rule adopted under Subsection (a) is not subject to
5-37 Section 2001.0045, Government Code.

5-38 SECTION 2. An insurer is not required to file a corporate
5-39 governance annual disclosure under Chapter 831, Insurance Code, as
5-40 added by this Act, before June 1, 2020.

5-41 SECTION 3. This Act takes effect September 1, 2019.

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